



FEDERAL TRADE COMMISSION

[File No. 211 0144]

Buckeye/Magellan; Analysis of Agreement Containing Consent Orders to Aid

Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write: “Buckeye/Magellan; File No. 211 0144” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Terry Thomas (202-326-3218), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Website at this web address: <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Buckeye/Magellan; File No. 211 0144” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Due to protective actions in response to the COVID-19 pandemic and the agency’s heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Buckeye/Magellan; File No. 211 0144” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment

should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on <https://www.regulations.gov> – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it

receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from IFM Global Infrastructure Fund, Buckeye Partners, L.P. (“Buckeye”) and Magellan Midstream Partners, L.P. (“Magellan”) (collectively, the “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Buckeye’s proposed acquisition from Magellan of 26 light petroleum product (“LPP”) terminals, located primarily in the southeastern United States.

The Commission’s Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for terminaling services for all LPPs, and terminaling services specifically for gasoline, in three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama.

Petroleum product terminals are critical to the efficient distribution of LPPs. Terminals generally consist of storage tanks that load fuel into tanker trucks for further delivery. Terminals receive their supply from pipelines or water vessels. Wholesale petroleum suppliers move LPPs from the terminals to retail locations and end-use customers. Terminaling services include the cluster of services related to the off-loading, temporary storage, and dispensing of LPPs into trucks.

Under the terms of the proposed Decision and Order (“Order”) included in the Consent Agreement, Buckeye must divest all of Magellan’s terminals located in North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama, to U.S. Venture, Inc. (“U.S. Venture”), a financially sound buyer with a record of operating successful LPP terminals in other locations. The divestitures will effectively restore an independent terminal operator in each relevant geographic market and will thereby preserve competition in each relevant market. Further, the Commission has issued, and Respondents have agreed to comply with, an Order to Maintain Assets that requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date U.S. Venture acquires the divested assets.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Buckeye provides midstream logistics solutions, primarily consisting of pipeline transportation, storage, and throughput of LPPs, which include gasoline and distillates. Buckeye is headquartered in Houston, Texas. Buckeye owns over 115 LLP terminals which are located primarily in the Northeast and Midwest. IFM Global Infrastructure Fund is the ultimate parent entity of Buckeye.

Magellan is a publicly traded partnership that transports, stores, processes, and distributes LLPs and crude oil. Magellan operates a pipeline system and terminals in the central United States as well as terminals in the southeastern United States. Magellan is headquartered in Tulsa, Oklahoma. In 2020, Magellan’s revenues from transportation and terminals were \$1.8 billion.

III. The Proposed Acquisition

Pursuant to an Equity Purchase Agreement dated June 9, 2021, Buckeye will acquire 26 LLP terminals from Magellan for approximately \$435 million (the “Acquisition”). The terminals are located in Alabama, Georgia, Missouri, North Carolina, South Carolina, Tennessee, and Virginia.

IV. The Relevant Markets

The Commission’s Complaint alleges that the relevant service markets in which to analyze the Acquisition is terminaling services for LPPs and terminaling services for gasoline specifically. Refiners, independent traders, and fuel marketers require a means to receive and store bulk quantities of LLPs and to deliver these products into tanker trucks, whether for their own use or for their customers. No cost-effective alternatives to terminaling services serve these functions. To provide terminaling services for gasoline, terminals generally must have specialized equipment, including vapor recovery units, tanks with internal floating roofs, and the ability to blend gasoline with ethanol. While gasoline-capable storage tanks may also handle distillates, the reverse is generally not possible without added expense, due to the more stringent regulatory requirements for the storage and handling of gasoline. Because storing and handling gasoline requires different tanks and other infrastructure, a narrower terminaling market also exists for terminaling services specifically for gasoline.

The Commission’s Complaint alleges three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama. The area that a particular terminal can serve is limited by several factors, including the density of retail outlets served from the terminal, trucking costs relating to labor and fuel, driving times and distances, loading and waiting times at the terminal, and the relative price differences of LPPs offered at alternative terminals.

The Acquisition would likely substantially lessen competition in each local market. In North Augusta, Buckeye and Magellan are two of only three firms that offer terminaling services for LPPs and for gasoline. The markets are highly concentrated with the significant increase in concentration giving rise to a presumption of enhanced market power post-Acquisition. In Spartanburg, as measured by LPP capacity, Buckeye owns the largest terminal and Magellan owns the second largest. The Acquisition would result in highly concentrated markets for LPP and gasoline terminaling services with a change in concentration giving rise to a presumption of enhanced market power. In Montgomery, the Acquisition would reduce the number of terminal service operators from six to five, resulting in a moderately concentrated market post-Acquisition, and would also reduce the number of gasoline terminal operators from five to four, resulting in a highly concentrated market post-Acquisition. Moreover, Buckeye and Magellan are two of few independent gasoline terminal operators in Montgomery, who have little or no refining or marketing activities that can be supported by their terminal operations. The Acquisition would leave as few as two independent gasoline terminal operators in Montgomery and limit options for third parties to access independent terminaling services providers in that market.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal and the time required to design, build, and permit a new facility.

V. The Proposed Order and the Order to Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Acquisition's likely anticompetitive effects alleged in the Commission's Complaint by requiring Buckeye to divest the Magellan terminals and all associated assets (the "Terminal Divestiture Assets") in North Augusta, Spartanburg, and Montgomery to U.S.

Venture. The proposed Order ensures that U.S. Venture or any other acquirer can operate the terminals in a manner equivalent in all material respects to the manner in which Magellan operated those businesses prior to the Acquisition.

U.S. Venture is a privately held company that was founded in 1951 and currently has a number of divisions, including U.S. Oil. U.S. Oil will be responsible for operating the divested terminals. U.S. Oil owns and operates 26 terminals in Iowa, Michigan, Indiana, Wisconsin, and Texas serving retail customers at 11 locations. U.S. Oil does not have any refined products terminals in the southeastern United States.

The proposed Order requires Buckeye to divest the Terminal Divestiture Assets no later than 10 days after Buckeye and Magellan consummate the Acquisition.

The proposed Order and the Order to Maintain Assets contain additional provisions designed to ensure the effectiveness of the relief. Both the proposed Order and the Order to Maintain Assets require Respondents to maintain the Terminal Divestiture Assets' full economic viability, marketability, and competitiveness until the divestitures are completed and to help facilitate the transfer of the Terminal Divestiture Assets to U.S. Venture.

In addition to requiring divestiture of the Terminal Divestiture Assets, the proposed Order requires Buckeye to seek prior approval from the Commission before acquiring any LPP terminal (including the divested terminals) within a 60-mile radius of the Terminal Divestiture Assets because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Acquisition and may fall below the Hart-Scott-Rodino Act premerger notification thresholds. The proposed Order further requires U.S. Venture to obtain prior approval from the Commission for a period of three years before transferring any of the divested assets to any buyer, and for a period of seven additional years to any buyer with an interest in any LLP terminal in any of the three relevant geographic markets.

Finally, the proposed Order appoints The Claro Group as an independent third-party monitor to oversee the Respondents' compliance with the requirements of the proposed Order. The Claro Group has previous experience serving as a monitor for the Commission in matters relating to natural gas pipelines and retail gasoline outlets.

The purpose of this analysis is to facilitate public comment on the proposed Order, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

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